

AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 629

Introduced by Senator Liu

February 27, 2009

An act to add Section 3260.3 to the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 629, as amended, Liu. Private works of improvement: retention proceeds.

Existing law generally regulates the terms and conditions of contracts for private works of improvement. Existing law requires that, within 45 days after the date of completion, as defined, retention proceeds withheld from any payment by the owner to the original contractor, or by the original contractor to any subcontractor, be released, except as specified. *Existing law provides that, if a bona fide dispute exists between an original contractor and a subcontractor, the original contractor may withhold from the retention payment up to 150% of the disputed amount.*

This bill, applicable to contracts entered into on or after January 1, 2010, would prohibit retention proceeds withheld from any payment made by the owner to the original contractor from exceeding 5% of the amount of the payment otherwise due under the contract. The bill would prohibit the percentage of the retention proceeds withheld from any payment made by the original contractor to any subcontractor, or by a subcontractor to another subcontractor, from exceeding 5% of the amount of the payment otherwise due under the contract, or the percentage of each payment that may be withheld under the contract between the owner and the original contractor, whichever is less. It

would require that any retention proceeds withheld pursuant to these provisions be deposited in an interest-bearing escrow account and would provide for payment of that interest, upon release of the retention proceeds, to the contractor or subcontractor to whom the proceeds were released. The bill would require that, with respect to a contract between an original contractor and a subcontractor, or between two subcontractors, any retention proceeds withheld, together with accrued interest, be released within 45 days after the date that all line items listed separately in any schedule of values that forms a part of the applicable contract were completed, or the date that the original contractor or subcontractor, as applicable, accepted the work for those line items. *The bill would provide that it does not prohibit the withholding of funds pursuant to the above provisions of law governing amounts in dispute.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3260.3 is added to the Civil Code, to
2 read:
- 3 3260.3. (a) This section is applicable with respect to all
4 contracts entered into on or after January 1, 2010, between an
5 owner and an original contractor, between an original contractor
6 and a subcontractor, and between two subcontractors, relating to
7 the construction of any private work of improvement.
- 8 (b) Except as otherwise provided in Section 3260, the following
9 provisions apply:
- 10 (1) Retention proceeds withheld from any payment made by
11 the owner to the original contractor shall not exceed 5 percent of
12 the amount of the payment otherwise due under the contract.
- 13 (2) Retention proceeds withheld from any payment made by
14 the original contractor to any subcontractor, or by a subcontractor
15 to another subcontractor, shall not exceed 5 percent of the amount
16 of the payment otherwise due under the contract, or the percentage
17 of each payment that may be withheld under the contract between
18 the owner and the original contractor, whichever is less.
- 19 (3) In no event shall the total amount of retention proceeds
20 withheld under all payments made under the contract exceed 5
21 percent of the total contract price.

1 (c) Any retention proceeds withheld pursuant to this section
2 shall be deposited in an interest-bearing escrow account. Upon the
3 release of any retention proceeds, the contractor or subcontractor
4 to whom the proceeds were released shall be entitled to any interest
5 earned in the escrow account.

6 (d) Notwithstanding any other provision of law, with respect to
7 a contract between an original contractor and a subcontractor, or
8 between two subcontractors, any retention proceeds withheld
9 pursuant to this section, together with accrued interest, shall be
10 released within 45 days after the date that all line items listed
11 separately in any schedule of values that forms a part of the
12 applicable contract were completed, as determined by the original
13 contractor or subcontractor for whom the work was performed, or
14 the date that the original contractor or subcontractor, as applicable,
15 accepted the work for those line items.

16 (e) It shall be against public policy for any party to require any
17 other party to waive any provision of this section.

18 (f) *This section does not prohibit the withholding of funds*
19 *pursuant to subdivisions (e) and (f) of Section 3260 in the event*
20 *of a dispute.*